

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM TY LANCASTER,

Defendant and Appellant.

B292433

(Los Angeles County
Super. Ct. No. LA025094)

APPEAL from an order of the Superior Court of
Los Angeles County, Michael B. Harwin, Judge. Affirmed.

Suzan Hier, under appointment by the Court of Appeal, for
Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Noah P. Hill and Shezad H. Thakor, Deputy
Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant William Ty Lancaster appeals from an order denying his petition under Proposition 36, the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126),¹ for recall of his sentence imposed for conviction of possession of a firearm by a felon. Appellant contends the trial court erred in finding that his conviction was ineligible for resentencing. We reject appellant's contention and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 1996, appellant was tried by jury and convicted of possession of a firearm by a felon. (Former § 12021, subd. (a)(1), now § 29800, subd. (a)(1).) At trial, Los Angeles Police Department officers David Grimes and John Chung testified that they saw appellant in an alleyway behind an apartment building between 7:45 and 8:00 a.m. on August 27, 1996. The officers did a pat-down search of appellant, and found a loaded semi-automatic .45 pistol in his left pant leg. Appellant was sentenced to 25 years to life under the Three Strikes law. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) We affirmed the conviction. (*People v. Lancaster* (Nov. 4, 1997, B110740) [nonpub. opn.].)

“In 2012, the electorate passed the Three Strikes Reform Act of 2012 ([Proposition 36]) (Prop. 36, as approved by voters, Gen. Elec. (Nov. 6, 2012)), which amended the [Three Strikes] law to reduce the punishment prescribed for certain third strike defendants.” (*People v. Conley* (2016) 63 Cal.4th 646, 651.) Proposition 36 “established a procedure for ‘persons presently serving an indeterminate term of imprisonment’ under the prior

¹All further statutory references are to the Penal Code unless otherwise indicated.

version of the Three Strikes law to seek resentencing under the Reform Act's revised penalty structure." (*Id.* at p. 653.) "But Proposition 36 makes a defendant ineligible for this limitation on third-strike sentencing if one of various grounds for ineligibility applies." (*People v. Perez* (2018) 4 Cal.5th 1055, 1062.) One basis for ineligibility is that "[d]uring the commission of the current offense, the defendant . . . was armed with a firearm." (§§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii); see also § 1170.126, subd. (e)(2).)

In December 2012, appellant filed a petition for recall of sentence under Proposition 36. The Los Angeles County District Attorney and defense counsel each requested multiple extensions of time relating to the motion, which the trial court granted. On July 23, 2018, the court held a hearing and denied the petition, finding that it had been established beyond a reasonable doubt that appellant was armed with a firearm during the commission of the crime, and he was therefore ineligible for resentencing.

Appellant timely appealed.

DISCUSSION

Appellant contends that a conviction for possessing a firearm is eligible for resentencing, because the language of section 667, subdivision (e)(2)(C)(iii) and section 1170.12, subdivision (c)(2)(C)(iii) requires that the firearm possession "must attach to the current offense as an addition and not just be an element of the current offense." He also asserts that Proposition 36 "requires that the arming and the offense be separate, but tethered, such that the availability of the weapon facilitates the commission of the offense."

Appellant acknowledges that multiple published cases have rejected his arguments. It is well established that a conviction

for possession of a firearm by a felon is not eligible for resentencing under Proposition 36 if the firearm was “available for offensive or defensive use.” (*People v. Blakely* (2014) 225 Cal.App.4th 1042, 1048; see also *People v. Frutoz* (2017) 8 Cal.App.5th 171, 175-180; *People v. Hicks* (2014) 231 Cal.App.4th 275, 282-285; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 792-799; *People v. Elder* (2014) 227 Cal.App.4th 1308, 1312-1314; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1035, disapproved on another ground in *People v. Frierson* (2017) 4 Cal.5th 225, 240, fn. 8.)

Appellant asserts that the cases listed above were decided incorrectly, and argues that a contrary holding would better comport with the language of section 667, subdivision (e)(2)(C)(iii) and section 1170.12, subdivision (c)(2)(C)(iii), as well as the electorate’s intent in implementing Proposition 36. We disagree. We follow the existing case law in finding that “the phrase ‘[d]uring the commission of the current offense, the defendant . . . was armed with a firearm . . . ,’ as used in sections 667, subdivision (e)(2)(C)(iii) and 1170.12, subdivision (c)(2)(C)(iii), and as disqualifies an inmate from resentencing pursuant to section 1170.126, subdivision (e)(2), extends to situations in which the defendant was convicted of violating [former] section 12021 *if* the defendant had the firearm he or she was convicted of possessing available for use, either offensively or defensively.” (*People v. Blakely, supra*, 225 Cal.App.4th 1042, 1054.)

Appellant does not assert that the firearm found in his possession was not available for offensive or defensive use, nor does he provide any persuasive justification to depart from the published case law on this subject.

DISPOSITION

Affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.